

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco

JAMES ALLEN,

No. C 12-01610 LB

Plaintiff,

ORDER GRANTING MOTION TO  
DISMISS

v.

NEXTERA ENERGY OPERATING  
SERVICES, LLC,

Defendant.

**I. INTRODUCTION**

Plaintiff James Allen sued Nextera Energy Operating Services, LLC<sup>1</sup> (formerly Florida Power and Light) in Alameda County Superior Court alleging state law claims stemming from Nextera's termination of Allen's employment. Complaint, ECF No. 1 at 7.<sup>2</sup> Allen's complaint alleges three claims: (1) wrongful termination in violation of public policy; (2) breach of employment contract; and (3) breach of the covenant of good faith and fair dealing. *Id.* at 9-10. Nextera removed the case to federal court based upon this court's diversity jurisdiction. Notice of Removal, ECF No. 1 at 2.

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<sup>1</sup> On May 22, 2012, Allen voluntarily dismissed Nextera Energy Montezuma II Wind, LLC, Nextera Energy Power Marketing, LLC, and Nextera Energy Project Management, LLC. ECF No. 13.

<sup>2</sup> Citations are to the Electronic Case File ("ECF") with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

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defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 557.) “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555 (internal citations and parentheticals omitted).

#### IV. DISCUSSION

##### A. Breach of Employment Contract

In his second cause of action, Allen alleges that Nextera breached the Agreement by discharging him without good cause, despite his satisfactory performance. ECF No. 1 at 10, ¶¶ 17-20. The parties do not dispute that in order to state a cause of action for breach of contract, Allen must allege: 1) the existence of a contract; 2) plaintiff’s performance or excuse for non-performance; 3) defendant’s breach; and 4) resulting damage. ECF No. 6 at 4. Because of the presumption of at will employment under California Labor Code Section 2292, Allen bears the burden of proving that he could only be discharged for cause. *See Haycock v. Hughes Aircraft Co.*, 22 Cal. App. 4th, 1473, 1489 (1994). Thus, Allen must allege sufficient facts to allow the court to draw the inference that Nextera could only terminate his employment for cause.

If the claim were based on a written contract, the complaint plausibly alleges the existence of that contract. But the complaint alleges an “oral, written and implied-in-fact” contract, ECF No. 1 at 10, ¶ 17. Allen’s opposition to Nextera’s motion argues only about a breach of contract claim predicated on a breach of an implied contract, *see* ECF No. 11 at 5 (referring to Allen’s claim for breach of an implied contract for employment), and he confirmed this at oral argument. Given this, Allen has not met his burden because he has not alleged any facts regarding when the implied contract took effect, how it was formed, or its specific terms. Without such details, Allen’s breach claim is wholly conclusory and falls short of the pleading standards mandated by *Iqbal* and *Twombly*. Accordingly, Nextera’s motion to dismiss Allen’s second cause of action is GRANTED with leave to amend.

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1 **B. Breach of the Covenant of Good Faith and Fair Dealing**

2 Allen's third cause of action is for breach of the covenant of good faith and fair dealing. This  
3 implied covenant "prevents a contracting party from engaging in conduct which, while not  
4 technically transgressing the covenants, frustrates the other party's right to the benefits of the  
5 contract." ECF No. 11 at 4. Because Allen has not sufficiently alleged the existence of the  
6 underlying contract, he has necessarily failed to state a claim for breach of a covenant implied in that  
7 contract. Accordingly, Nextera's motion to dismiss Allen's third cause of action is GRANTED with  
8 leave to amend.

9 **V. CONCLUSION**

10 Based on the foregoing, Nextera's motion to dismiss Allen's Complaint is GRANTED with  
11 leave to amend.

12 This disposes of ECF No. 6.

13 **IT IS SO ORDERED.**

14 Dated: May 25, 2012



15 LAUREL BEELER  
16 United States Magistrate Judge  
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